



On January 29, 2021, the Department submitted a position statement, explaining that although cloud seeding is regulated by the Weather Modification Board,<sup>2</sup> which includes the Secretary of Agriculture as a member, there have never been any applicants for a cloud seeding license and no entity has been investigated for unlicensed cloud seeding. In support of this statement, the Department submitted the attestations of Susan West, the Department's Agency Open Records Officer, and Ruth Welliver, who attest that the Department has never granted a license or imposed a fine for unlicensed cloud seeding, that the Weather Modification Board has not been active during the responsive years, and that a search for records and consultation with other employees did not produce responsive documents.

Under the RTKL, a verification may serve as competent evidence to sustain an agency's burden of proof. *See Sherry v. Radnor Twp. Sch. Dist.*, 20 A.3d 515, 520-21 (Pa. Commw. Ct. 2011); *Moore v. Office of Open Records*, 992 A.2d 907, 909 (Pa. Commw. Ct. 2010). In the absence of any evidence that the Department has acted in bad faith or that the requested records exist, "the averments in [the affidavit] should be accepted as true." *McGowan v. Pa. Dep't of Env'tl. Prot.*, 103 A.3d 374, 382-83 (Pa. Commw. Ct. 2014) (citing *Office of the Governor v. Scolforo*, 65 A.3d 1095, 1103 (Pa. Commw. Ct. 2013)). Therefore, the Department has demonstrated that no responsive records exist. *See Hodges v. Pa. Dep't of Health*, 29 A.3d 1190, 1192 (Pa. Commw. Ct. 2011).<sup>3</sup>

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<sup>2</sup> The Weather Modification Board was created by the Weather Modification Act of January 19, 1968. 3 P.S. §§ 1101-1108. The Department is charged with the administration of the Weather Modification Act, and therefore would be the proper agency to seek licenses from, if they did exist. 3 P.S. § 1103. It is unlawful to "cause or attempt to cause condensation or precipitation of rain, snow, moisture, or water in any form contained in the atmosphere" without first obtaining a license from the Department. 3 P.S. § 1105.

<sup>3</sup> The Requester argues that there is evidence that cloud seeding occurred in 2018, because of the high rainfall during that year, which he intimates was timed for political manipulation. However, high rainfall is not sufficient evidence that cloud seeding was occurring; and even if the Requester could prove that cloud seeding was ongoing, it would not prove that the Department had either licensed or fined any entities in connection with that activity.

For the foregoing reasons, the Requester's appeal is **denied**, and the Department is not required to take any further action. This Final Determination is binding on all parties. Within thirty days of the mailing date of this Final Determination, any party may appeal to the Commonwealth Court. 65 P.S. § 67.1301(a). All parties must be served with notice of the appeal. The OOR also shall be served notice and have an opportunity to respond according to court rules as per Section 1303 of the RTKL. However, as the quasi-judicial tribunal adjudicating this matter, the OOR is not a proper party to any appeal and should not be named as a party.<sup>4</sup> This Final Determination shall be placed on the OOR website at: <http://openrecords.pa.gov>.

**FINAL DETERMINATION ISSUED AND MAILED: February 18, 2021**

*/s/ Jordan Davis*

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<sup>4</sup> *Padgett v. Pa. State Police*, 73 A.3d 644, 648 n.5 (Pa. Commw. Ct. 2013).